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6 7	IN THE SUPERIOR COURT OF	THE STATE OF WASHINGTON					
8	IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING						
° 9	GENERAL TEAMSTERS LOCAL UNION	No. 11-2-41541-4 SEA					
10	NO. 174, a labor organization, and UNITED FOOD AND COMMERCIAL WORKERS						
10	LOCAL UNION NO. 21, a labor organization, on behalf of their members,	COMPLAINT FOR DECLARATORY JUDGMENT AND					
12	Plaintiffs,	INJUNCTIVE RELIEF					
12	V.						
14							
15	The STATE OF WASHINGTON;						
16	CHRISTINE GREGOIRE, in her official capacity as Governor of the State of						
17	Washington,						
18	Defendants.						
19	I. INTRODUCTION						
20	1. Article II, § 19 of the Washington Constitution provides that "[n]o bill shall						
21	embrace more than one subject, and that shall be expressed in the title."						
22	2. Article II, § 19 contains two separate requirements. The first is that every bill						
23	(including initiatives) may contain only a single subject. The second is that the single subject						
24	of the bill or initiative must be reflected in the bill or the ballot title.						
25	3. The object of this constitutional provision is threefold: (1) to prevent hodge-						
26	podge or "logrolling" legislation; (2) to prevent surprise or fraud upon voters by means of COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 1 BARNARD IGLITZIN & LAVIT, LLP 18 WEST MERCER STREET SUITE 400 SEATTLE, WASHINGTON 98119-3971 (206) 285-2828						

provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered.

4. Initiative No. 1183 ("I-1183") privatizes the sale and distribution of hard liquor by (1) closing state liquor stores and selling the state's related assets, and (2) licensing private parties to control the sale and distribution of hard liquor.

5. I-1183 separately imposes a seventeen percent (17%) tax on gross revenues from hard liquor sales.

6. I-1183 separately imposes a tax on the retail sale of hard liquor by spirits distributor licensees in amounts ranging from fifteen percent (15%) (for retail sales in the original package) and ten percent (10%) (for sales from the licensee to a restaurant spirits retailer) to certain specified amounts per liter (for different types of sales).

7. I-1183 separately allows off-premise retailers (i.e., grocery stores over a certain size) to act as distributors for on-premise retailers (i.e., restaurants and bars).

8. I-1183 separately imposes significant fines and license suspension penalties for selling liquor to minors, double those for selling wine or beer to minors.

9. I-1183 separately grants franchise protection for hard liquor distributors.

10. I-1183 separately alters Washington's existing wholesale distribution and pricing model for wine to allow "non-uniform" (i.e., discriminatory) wholesale pricing and central warehousing.

11. I-1183 separately strips the Washington State Liquor Control Board ("LCB") of its authority to restrict price advertising regarding hard liquor, wine or beer.

12. I-1183 separately allocates ten million dollars (\$10,000,000) each year to border areas, counties, cities and towns for the purpose of enhancing public safety programs.

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13. I-1183 violates Article II, § 19 of the Washington Constitution because it embraces multiple subjects and contains subjects within its body that are not embraced by its title.

14. Accordingly, I-1183 is unconstitutional in its entirety. Plaintiffs seek declaratory and injunctive relief against the State of Washington to prevent continued enforcement of I-1183.

II. PARTIES

15. Plaintiff General Teamsters Union Local 174 ("Local 174") is a labor organization as defined in Sec. 3(i) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 402(i). Its principal place of business is in King County, Washington. Local 174 is a "person" within the meaning of RCW 7.24.130.

16. Local 174 has approximately 6,500 members in the State of Washington. The goals regarding which these members are represented include, but are not limited to, "secur[ing] improved wages, hours, working conditions and other economic advantages through organization, negotiations and collective bargaining; by gaining advancement of our standing in the community and in the labor movement with legal and economic means, and by other lawful methods." Section 4(A)(c), By-Laws for Local 174 of the International Brotherhood of Teamsters.

17. Local 174's members work as truck drivers, loaders, and warehouse clerks in various industries including, but not limited to, the cartage, freight, sanitation, grocery distribution, building materials, fuel oil, food processing, sand and gravel, and beverage industries.

18. Local 174 is affiliated with the International Brotherhood of Teamsters Joint Council 28, an intermediate organization with authority over twelve local unions (including Local 174), totaling approximately 52,000 members who are employed in similar industries in the State of Washington.

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19. Local 174 is also affiliated with the International Brotherhood of Teamsters, which has approximately 1,400,000 members nationwide and Canada.

20. Approximately 145 of Local 174's members work for private employers who currently transport intoxicating liquor pursuant to contracts in effect between those employers and the State of Washington. Those private employers include, but are not necessarily limited to, Pozzi Bros Transportation Inc. and Oak Harbor Freight Lines, Inc.

21. Plaintiff United Food and Commercial Workers Union Local Union No. 21 ("Local 21") is a labor organization as defined in Sec. 3(i) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 402(i). Its principal place of business is in King County, Washington. Local 21 is a "person" within the meaning of RCW 7.24.130.

22. Local 21 is the largest private-sector union in Washington, with over 35,000 members working in grocery store, retail, health care, and other industry jobs. Local 21 is a chartered member of UFCW International Union with over 1.4 million workers in North America.

23. Local 21 represents these employees for two purposes: (1) representing them in collective bargaining with their employers, through the negotiation and administration of collective bargaining agreements, and (2) improving their wages, working conditions and job security, through whatever means are available.

24. Approximately 700 Local 21 members work as retail employees for the LCB.

25. Defendants are the State of Washington and Christine Gregoire, in her official capacity as Governor of the State of Washington.

III. JURISDICTION AND VENUE

26. This Court has jurisdiction over this matter pursuant to chapter 2.08 RCW and chapter 7.24 RCW.

 27. Venue is proper in this Court pursuant to RCW 4.92.010 because the residence or principal place of business of one or more of the Plaintiffs is in King County, Washington.

INJUNCTIVE RELIEF - 4

IV. STANDING

28. Plaintiffs have standing under the Uniform Declaratory Judgments Act, RCW7.24.010 and 7.24.020, to challenge I-1183 because they fall within the zone of interests thatI-1183 regulates, and they have or will suffer an injury in fact, economic or otherwise, fromthe enforcement of I-1183.

29. Specifically, those members of Local 174 who work for private employers who currently transport intoxicating liquor pursuant to contracts in effect between those employers and the State of Washington have had their future employment put in immediate jeopardy by certain provisions contained in I-1183.

30. Local 174 has standing to bring this suit because (a) its members who work for private employers who currently transport intoxicating liquor pursuant to contracts in effect between those employers and the State of Washington, as described above, would otherwise have standing in their own right, (b) ensuring the job security of these members is germane to the purpose and goals of Local 174, and (c) none of the claims asserted herein require the participation of all of the individual employees on whose behalf Local 174 is bringing this suit.

31. Additionally, those members of Local 21 who work for the LCB have had their future employment put in immediate jeopardy by certain provisions contained in I-1183.

32. Local 21 has standing to bring this suit because (a) its members who work for the LCB, as described above, would otherwise have standing in their own right, (b) ensuring the job security of these members is germane to the purpose and goals of Local 21, and (c) none of the claims asserted herein require the participation of all of the individual employees on whose behalf Local 21 is bringing this suit.

33. This Court's grant of declaratory and injunctive relief will directly redress the harms caused to the Plaintiffs by continued enforcement of I-1183.

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V. FACTS

Washington's History of Regulatory Control over Beverage Alcohol

34. In 1933, the Twenty-First Amendment to the United States Constitution repealed Prohibition and granted states the power to regulate the distribution and sale of alcohol.

35. In 1934, Washington adopted the Washington State Liquor Act (the "Liquor Act") to regulate the importation, manufacture, distribution and sale of alcohol. With this Act, Washington adopted a "control" system, whereby the state controlled the distribution and sale of some alcoholic beverages to encourage higher levels of public safety, controlled distribution, and efficient tax collection.

A.

36. The Liquor Act established the LCB.

37. The LCB is a State administrative agency empowered to regulate the sale and distribution of liquor, which includes: spirits ("hard liquor"), wine, and beer. RCW 66.04.010(25).

38. The different types of liquor – hard liquor, beer and wine – have been regulated differently by the State since the passage of the Liquor Act.

B. The State's Regulatory Structure for Wine

39. With regard to the distribution and sale of wine, the State generally follows a three-tier system. This means that the functions of manufacturing, distributing, and retailing are distinct and the financial relationships and business transactions between entities in these tiers are regulated. RCW 66.28.280.

The manufacturer tier consists of the producers of wine.

41. The distributor tier consists of business entities that purchase wine from the manufacturers and resell to retailers through distribution channels.

4 42. The retailer tier sells wine to consumers. Retail establishments consist of onpremises retailers (e.g., restaurants, bars, hotels) and off-premises retailers (e.g., wine shops, grocery stores, and "big box" retailers such as Costco).

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43. A fundamental aspect of the State's three-tier system applicable to wine is the creation and enforcement of a uniform pricing structure, which means that the producer of a particular wine must sell that product to all distributors at the same price, and a distributor must sell a particular product to all retailers at the same price. RCW 66.28.170-180.

44. The distributors' sales to retailers must be on a delivered price basis so that a retailer in a small farming community or any other remote corner of the State will pay the same price for a particular wine as every other retailer served by the same distributor.

45. Volume discounts are illegal on manufacturers' sales to distributors or distributors' sales to retailers. RCW 66.28.180(2)(d); RCW 66.28.180(1)(d).

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Retailers are prohibited from selling wine to other retailers. RCW 66.28.070.

47. All of these provisions work together to ensure that the price for wine is at least roughly the same everywhere in the State. This eliminates any possibility of price discrimination, which would put small businesses at an economic disadvantage against larger businesses and encourage over-promotion of sales. It also eliminates significant geographic disparities, so everyone in the state has reasonable access to wine at reasonable prices.

48. The LCB supervises the distribution and retail sale of wine through a regulatory licensing system.

49. Participants in each tier must obtain a license to manufacture, distribute, or sell wine, with a variety of regulations applying to each type of license. *See, e.g.*, RCW 66.24.170 (domestic winery license); RCW 66.24.200 (wine distributor license); RCW 66.24.360 (grocery store retail license for wine).

50. Private retailers may obtain a license to sell wine in its original package.

C. The State's Regulatory Structure for Hard Liquor

51. Unlike the system applicable to wine, the State separately and directly controls the distribution and sale of hard liquor. The State has done so since enacting the

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Liquor Act in 1934. This is still considered a three-tier system, but with the State operating as the distributor and retailer.

52. For distribution control, the LCB operates a central facility in Seattle to distribute hard liquor.

53. For retail operations, the LCB has established "state liquor stores" in accord with the Liquor Act.

54. The LCB has established approximately 165 state-operated liquor stores and 160 contract liquor stores in Washington.

55. State liquor stores are responsible for supplying hard liquor to the various types of licensees who sell hard liquor by the glass, such as restaurants, taverns, and bars.

56. Unlike wine, and with limited exception for craft hard liquor, hard liquor in original containers must be purchased exclusively from a state liquor store. *See, e.g.*, RCW 66.16.010. Private parties cannot obtain a license to sell hard liquor in its original package.

D. The State's Regulatory Structure for Beer

57. The State generally follows a three-tier system for the distribution and sale of beer. RCW 66.28.280.

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58. The retailer tier sells beer to consumers.

59. The LCB supervises the distribution and retail sale of beer through a regulatory licensing system.

60. Participants in each tier must obtain a license to manufacture, distribute, or sell beer, with a variety of regulations applying to each type of license. *See, e.g.*, RCW
66.24.240 (domestic brewery's license); RCW 66.24.250 (beer distributor's license); RCW
66.24.360 (grocery store retail license for beer).

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61. On May 20, 2011, I-1183 was filed by its sponsors for consideration in the

26 November 2011 election.

INITIATIVE NO. 1183

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62. I-1183's ballot title provides:

Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor)

This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution.

Should this measure be enacted into law? Yes [] No [].

63. I-1183 passed in the November 2011 general election.

64. I-1183 privatizes Washington's system of hard liquor distribution and sales. I-1183 § 101(1)(a). The measure requires the closure and sale of the State's liquor distribution center and allows private entities to distribute hard liquor. *Id.* § 101(c). I-1183 also requires the closure and sale or auction of current state liquor stores. In their place, private retailers with retail premises of 10,000 square feet or larger are allowed to sell and centrally warehouse hard liquor. *Id.* § 101(g). The measure also includes an exception that permits smaller stores to sell hard liquor under certain circumstances. *Id.*

65. Contrary to the ballot title, which states that I-1183 would "regulate" licensees, I-1183 actually deregulates licensees by repealing and/or amending numerous regulations currently governing hard liquor sales, including but not limited to provisions governing uniform pricing and limiting hours and location for the sale of hard liquor. For example, I-1183 repeals RCW 66.08.070 (sales of liquor), RCW 66.08.166-167 (Sunday sale restrictions on hours and location), and RCW 66.16.001 (uniform pricing).

66. I-1183 also imposes significant fines and license suspension penalties for selling liquor to minors and other offenses, double those penalties currently existing for the same or similar offenses committed by entities other than retail spirits licensees. *See* I-1183, § 104(7).

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67. I-1183 levies a seventeen percent (17%) tax on gross hard liquor sales. I-1183 § 103(4). I-1183's ballot title, however, does not refer to taxes. Instead, the ballot title misleadingly refers only to the "set[ting] of license fees based on sales."

68. I-1183 also imposes various taxes on the retail sale of hard liquor by spirits distributor licensees in amounts ranging from fifteen percent (15%) (for retail sales in the original package) and ten percent (10%) (for sales from the licensee to a restaurant spirits retailer) to certain specified amounts per liter (for different types of sales). *See* I-1183, § 106.

69. I-1183 also creates franchise protection for hard liquor distributors. I-1183 §§
212 – 214. Such franchise protection did not previously exist.

70. I-1183 also modifies the existing three-tier wholesale distribution and pricing model for wine. These changes include, among other things, removing the uniform pricing system to allow discriminatory wholesale pricing in order to facilitate volume discounts and permitting retailers to centrally warehouse wine. *See, e.g.*, I-1183 §§ 101(2)(n), 101(2)(o), 119.

71. I-1183 additionally creates a fourth tier of distribution for wine by allowing off-premise retailers (i.e., grocery stores over a certain size) to act as distributors for onpremise retailers (i.e., restaurants and bars). *See, e.g.*, I-1183 § 104(8).

72. I-1183 also strips the LCB of its authority to restrict price advertising regarding hard liquor, wine or beer.

73. I-1183 also uses new tax revenues to fund local public safety programs. Specifically, it provides that "[a]n additional distribution of ten million dollars per year from the spirits license fees must be provided to border areas, counties, cities, and towns through the liquor revolving fund for the purpose of enhancing public safety programs." I-1183 § 302.

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		VI.	FIR	RST (CAUS	E C	F A	C	TON:				
	VIOLATION	OF T	HE "	'SIN(GLE-	SUI	BJE	CT	" RE()UIR	EME	NT	
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74. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully set forth herein.

75. I-1183 violates the single-subject rule set forth in Article II, § 19 of the Washington Constitution in multiple ways, including without limitation:

- a. I-1183 is drafted such that those voting on it are required to vote for multiple subjects, including but not limited to those set forth in paragraphs 65 through 73 above, in order to obtain approval of an unrelated subject, the privatization of hard liquor.
- b. I-1183 enacts piecemeal legislation modifying unconnected aspects of two of the three historically distinct categories of Washington's liquor laws: hard liquor and wine. The multiple subjects described above lack rational unity to one another.

SECOND CAUSE OF ACTION:

VIOLATION OF THE "SUBJECT-IN-TITLE" REQUIREMENT OF ARTICLE II, SECTION 19 OF THE WASHINGTON CONSTITUTION

76. I-1183 violates the subject-in-title rule because the initiative's body embraces multiple subjects not embraced by its title.

a. For example, I-1183's title references that the initiative will "set license fees based on sales." The body of the act, however, in addition to imposing annual license fees, imposes and multiple separate taxes based on both percentage and volume of sales. The ballot title did not inform voters that the body of the act operates to impose substantial taxes. Such omission violates Article II, § 19's purpose to avoid surprise or fraud upon the voters.

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- b. Additionally, I-1183's title says nothing about how the initiative will potentially impact the way beer is advertised. Omission of the fact that the initiative strips the LCB of its authority to restrict price advertising regarding beer similarly violates Article II, § 19's purpose to avoid surprise or fraud upon the voters.
- c. Other of I-1183's multiple subjects, including franchise protection for hard liquor distributors, imposition of harsher penalties for various liquor-related offenses, creation of a new fourth tier of wine sales, and the allocation of new tax revenues to fund local public safety programs are similarly not reflected in the title.

THIRD CAUSE OF ACTION:

REQUEST FOR DECLARATORY JUDGMENT REGARDING CONSTITUTIONALITY OF INITIATIVE NO. 1183

77. An actual dispute exists between Plaintiffs and Defendants, which parties have genuine and opposing interests, which interests are direct and substantial, and of which a judicial determination would be final and conclusive.

78. Plaintiffs are therefore entitled to a declaratory judgment that I-1183 is unconstitutional, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

FOURTH CAUSE OF ACTION:

REQUEST FOR INJUNCTIVE RELIEF

79. Plaintiffs have clear legal rights to prevent and enjoin continued enforcement of I-1183 as described herein, which rights are and continue to be invaded by Defendants, resulting in actual and continuing injury. No adequate remedy at law exists to remedy this invasion of Plaintiffs' rights.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 12

1	80. Plaint	tiffs are therefore entitled to an injunction restrain	ning and prohibiting				
2	further enforcement of I-1183.						
3	VII. PRAYER FOR RELIEF						
4	WHEREFOR	RE, Plaintiffs request the following relief:					
5	1. That	That the Court enter a declaratory judgment that I-1183 violates Article II, §					
6	19 of the Washington Constitution and is therefore null and void;						
7	2. Such	Such other and further relief as may follow from the entry of a declaratory					
8	judgment;						
9	3. Entry	of an injunction prohibiting further enforcement of	I-1183;				
10	4. Reaso	Reasonable attorney's fees, expenses and costs, to the fullest extent allowed					
11	by law and equity; a	nd					
12	5. Any f	5. Any further relief as this Court may deem necessary and proper.					
13	RESPECTFULLY SUBMITTED this 6 th day of December, 2011.						
14		By: <u>s/Dmitri Iglitzin</u>					
15		Dmitri Iglitzin, WSBA No. 17673					
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21		By: <u>s/Jim McGuinness</u> James McGuinness, WSBA No. 23	404				
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25			mmaraial				
26		Attorneys for United Food and Cor Workers Local No. 21	umerciui				
	COMPLAINT FOR INJUNCTIVE RELI	DECLARATORY JUDGMENT AND IEF - 13	LAW OFFICES OF SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT, LLP 18 WEST MERCER STREET SUITE 400 SEATTLE, WASHINGTON 98119-3971 (206) 285-2828				